

No. 162

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CHARLES ELMORE CROPLEY
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Supreme Court of the United States

OCTOBER TERM, 1943.

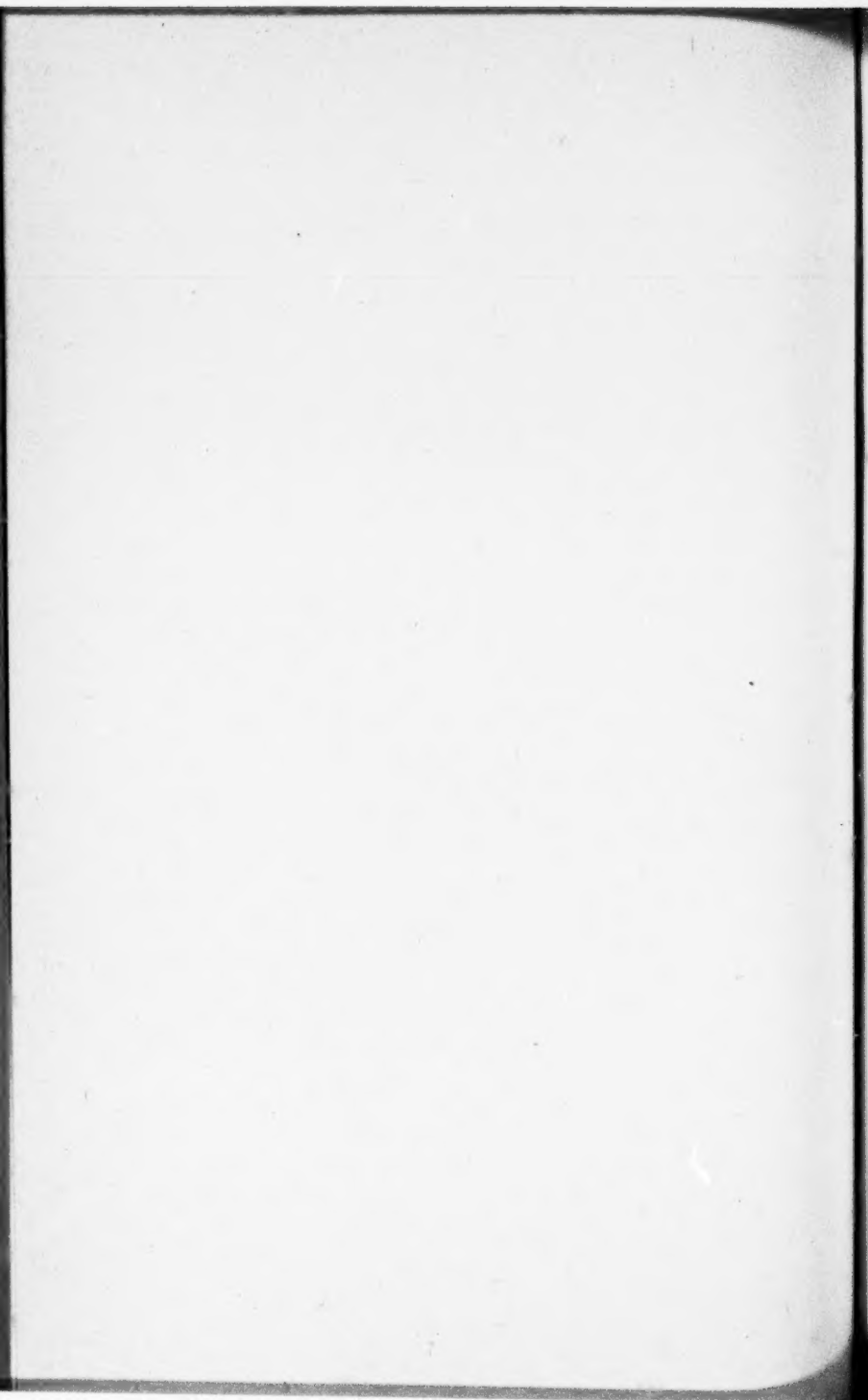
JOHN KLINGER, alias JACOB KLINGER,
Petitioner,

AGAINST

UNITED STATES OF AMERICA,
Respondent.

PETITION AND BRIEF FOR WRIT OF CERTIORARI.

LOUIS HALLE,
Attorney for Petitioner.



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*To the Honorable Chief Justice of the United States and
Associate Justices of the Supreme Court of the
United States:*

Your petitioner, John Klinger, alias Jacob Klinger, prays that a writ of certiorari issue to review the Judgment of the United States Circuit Court of Appeals for the Second Circuit, on which decision was rendered on the 11th day of June, 1943, affirming the judgment of the United States District Court, for the Southern District of New York, in the Borough of Manhattan, City and State of New York, convicting the defendant of a violation of Title 50, Appendix, Section 633, United States Code and Ration Order No. 5A, adopted and issued pursuant thereto.

Petition for Writ of Certiorari.

Statement of the Matter Involved.

The defendant was charged with unlawfully, wilfully and knowingly possessing, transferring and assigning 192 Class "C" Gasoline Ration Coupons, bound together in two separate and distinct parcels, on or about October 19, 1942, in violation of Title 50, Appendix, Section 633, United States Code, and Ration Order No. 5A adopted and issued pursuant thereto.

The defendant took the witness stand in his own behalf. Upon cross-examination the Assistant United States Attorney was permitted, over objection, to bring out that the defendant had previously claimed his privilege against self-incrimination when appearing before the grand jury and was permitted to ask the witness:

"Isn't it a fact that you refused to answer on the ground that to answer might incriminate you?"
(R., p. 102).

It further appears from the record that the defendant's said appearance before the grand jury was involuntary (R., p. 106).

Your petitioner respectfully submits that permitting these facts to be presented to the trial jury was highly prejudicial to the defendant's constitutional rights, and was in direct conflict with the decision of this court in the case of *Johnson v. U. S.*, 87 L. ed. 496 (Adv. Sheets No. 9).

Question Involved.

Is it permissible for the United States Attorney to bring out, on cross-examination of a defendant in a criminal cause, when testifying on his own behalf, that he re-

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fused to answer questions before the grand jury on the ground that such answers might incriminate him?

Reasons for Allowance of Writ.

It is respectfully submitted that the decision of this court in the case of *Johnson v. U. S.*, 87 L. ed. 496 (Adv. Sheets No. 9) expressly forbids the practice indulged in by the United States Attorney upon the trial of this defendant.

The Circuit Court of Appeals, in its decision, sought to distinguish the case at bar from the case of *Johnson v. U. S.* by limiting the *Johnson* case to cases where the claim of privilege is made and sustained during the course of the testimony of the accused at a trial and, even then, only when the Judge has erroneously sustained the privilege. Your petitioner respectfully submits that there is no basis for this tenuous distinction which would take from a defendant one of his most important constitutional privileges.

WHEREFORE your petitioner respectfully prays that this petition for Writ of Certiorari to review the judgment of the Circuit Court of Appeals herein be granted.

New York, N. Y., June 29, 1943.

JOHN KLINGER,

By: LOUIS HALLE,
Counsel for Petitioner.